

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 870

INTRODUCER: Senators Aronberg, Lynn, and Storms

SUBJECT: Statutes of Limitation/Sexual Battery

DATE: March 4, 2010

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Cellon  | Cannon         | CJ        | <b>Favorable</b> |
| 2. |         |                | JU        |                  |
| 3. |         |                | JA        |                  |
| 4. |         |                |           |                  |
| 5. |         |                |           |                  |
| 6. |         |                |           |                  |

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**I. Summary:**

This bill eliminates the civil statutes of limitation in cases involving acts which constitute sexual battery on a minor during the time when the victim is under the age of 16 at the time of the act. The current time limitation in an action for recovery of damages based upon a theory of intentional tort is four years.

It also eliminates the statute of limitations in criminal cases of sexual battery when the victim is under the age of 16 at the time of the offense. The specific sexual battery crimes to which this change would apply are found in subsections 794.011(5) and (8), of the sexual battery statute.

This bill substantially amends the following sections of the Florida Statutes: 95.11 and 775.15.

**II. Present Situation:**

**Florida's Statutes of Limitation in Criminal Cases**

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, commonly known as "statutes of limitation."

There were no statutes of limitation at common law. *State v. McCloud*, 67 So.2d 242, 243 (Fla. 1953). Rather, statutes of limitation are a statutory creation. *Id.*

In *State v. Hickman*, the court borrows a section from 22 C.J.S., Criminal Law s. 223 to explain that:

Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity. *State v. Hickman*, 189 So.2d 254, 262 (Fla. 2nd DCA 1966).

Section 775.15(3), F.S., provides that the time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's duplicity therein is terminated.

Section 775.15, F.S., provides the following general time limitations for initiating a criminal prosecution for any felony offense:

- For a capital felony, a life felony, a felony resulting in death, or a first degree felony sexual battery on a victim under 18, there is no time limitation;
- For a first or second degree felony violation of s. 794.011, F.S., (which includes several different sexual battery offenses) if reported to a law enforcement agency within 72 hours after commission of the crime, there is no time limitation;
- For any felony that results in injury to a person when the felony arises from the use of a destructive device, a ten-year limitation applies;
- For a first degree felony, a four-year limitation applies;
- For any other felony, a three-year limitation applies.

These general time limitation periods are extended to five years for prosecutions involving securities transaction violations (ch. 517, F.S.), Medicaid provider fraud (s. 409.920, F.S.), insurance fraud by an employer (s. 440.105, F.S.), filing a false insurance claim (s. 817.234, F.S.), felony abuse against elderly persons or disabled adults (s. 825.102, F.S.), and prosecutions involving environmental control felony violations (ch. 403, F.S.).

For the offenses of sexual battery, lewd or lascivious acts, and other enumerated felony offenses, in addition to these general time periods, an offender may be prosecuted at any time after the date on which his or her identity is established, or should have been established through the exercise of due diligence, through the analysis of DNA evidence (except that for offenses committed between July 1, 2004 and June 30, 2006, an offender may be prosecuted within 1 year after the date on which the identity of the offender is established, or should have been established by the exercise of due diligence, through the analysis of DNA). ss. 775.15(15), (16), F.S.

Under current law, there is no time limitation for beginning a prosecution of most sexual battery crimes where the victim is a minor. Only two sexual battery offenses where the victim is a minor have an applicable time limitation.

As to these two offenses, the applicable time limitation does not begin to run until the earlier of the date that the minor reaches 18 years of age or the crime is reported to law enforcement. Those two offenses are as follows:

- Section 794.011(5), F.S., provides that a person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree. There is no time limitation for commencing prosecution for this crime if the sexual battery was reported to law enforcement within 72 hours after the commission of the crime or if there were multiple perpetrators. Otherwise, the time limitation is 3 years.
- Section 794.011(8), F.S., provides that without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who solicits that person to engage in any act which would constitute sexual battery commits a felony of the third degree. The time limitation is 3 years.

### **Limitations of Actions in Civil Cases**

Section 95.031, F.S., provides that the time within which an action commences under any statutes of limitation runs from the time that the cause of action accrues. In an action for recovery of damages based upon a theory of intentional tort, the action must commence within four years, pursuant to s. 95.11(3)(o), F.S.

In a case where the action is specifically based upon abuse or incest, the action must commence within seven years of the victim reaching age 18, or within four years after the child leaves the dependency of the abuser, or of the discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later. s. 95.11(7), F.S. This time limitation is the statutory application of the "delayed discovery doctrine" and its use in childhood sexual abuse or incest cases was upheld in *Hearndon v. Graham*, 767 So.2d 1179 (Fla. 2000). In that case The Florida Supreme Court held that the delayed discovery doctrine applies in childhood sexual abuse cases. This doctrine is applied in other types of tort actions as well. The delayed discovery doctrine provides that a "cause of action does not accrue until the plaintiff either knows or reasonably should know of the tortuous act giving rise to the cause of action." *Id.* at 1184. As the court noted, it is both the majority rule and the modern trend to apply the doctrine in cases of childhood sexual abuse followed by a temporary loss of memory. *Id.* at 1186.

The court explained in *Hearndon* that there is a difference between tolling a statute of limitation and the delayed discovery doctrine. Simply, the statute of limitation begins to run from the time when the cause of action accrues. The tolling of the limitation period interrupts the running of the time limitation after the action has accrued. The application of the delayed discovery doctrine recognizes a delay in the accrual of the cause of action. *Id.* at 1184-1185.

Incest is defined in s. 826.04, F.S., as sexual intercourse with a person to whom the perpetrator is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece. Abuse of a child is defined in s. 39.01, F.S., and s. 984.03, F.S., as any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired.

### III. Effect of Proposed Changes:

This bill eliminates the civil statutes of limitation in cases involving acts which constitute sexual battery on a minor during the time when the victim is under the age of 16 at the time of the act. Sexual battery is generally defined as “oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.” s. 794.011(1)(h), F.S.

Regarding the statutes of limitation applicable in criminal cases of sexual battery upon a victim under the age of 16, the limitation periods for initiating a criminal prosecution are likewise eliminated.

Because the criminal statutes of limitation currently provide for the prosecution of any capital, life, or first-degree felony sexual battery on a minor victim to be commenced at any time, this bill essentially affects the potential prosecution of second and third degree felony violations of the sexual battery statute. These are cases where the victim is 12 years of age or older (but less than 16, for purposes of this bill).

The bill takes effect July 1, 2010.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

The statute of limitations in effect at the time the crime is committed controls. *State ex rel Manucy v. Wadsworth, in and for St. Johns County*, 293 So.2d 345, 347 (Fla. 1974). The Legislature can extend the limitations period without violating ex post facto laws if it does so before prosecution is barred by the old statute and clearly indicates that the new statute is to apply to cases pending when it becomes effective. *U.S. v. Richardson*, 512 F.2d 105, 106 (3rd Cir. 1975).

The bill clearly states the intent of the Legislature in this regard, as offenses the prosecution of which are barred on or before the effective date of the bill are exempted from its application.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Although it is difficult to quantify, there could be a financial impact upon a defendant in a civil suit that is brought under the time limitations created by the bill. But for the change in the time limit for bringing a civil action, damages may have not been assessed as a result of a successful lawsuit because the suit may have been barred by the current statute of limitation.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference has not met to consider this bill as of the date of this analysis.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.